

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In the Matter of the Application of SETH JACOBY,

Index No.: 12 MISC. 00065

Movant,

FOR AN ORDER TO QUASH A SUBPOENA in the  
Southern District of New York, in a case pending in the  
Eastern District of Michigan.

**AFFIDAVIT OF SETH  
JACOBY IN FURTHER  
SUPPORT OF MOTION TO  
QUASH**

-----X  
STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK )

SETH JACOBY, being duly sworn, deposes and says:

1. I am the movant in the above captioned matter. I submit this affidavit to clarify issues raised in respondent The Weather Underground, Inc.'s ("Respondent") opposition to the motion to quash the subpoena dated February 21, 2012 (the "Subpoena"). In my initial affidavit, I made clear that my employment with Firstlook ended on July 15, 2011. Respondent's opposition papers attempt to disparage me, implying that I am being less than honest about this fact. Attached hereto as Exhibit 1 are various papers regarding my COBRA election that I made upon the end of my employment with Firstlook, Inc. ("Firstlook"). Despite Respondent's attempt to smear my name, I assure this Court that I am no longer employed by Firstlook, and have not been since the early summer last year.
2. Respondent's opposition has also gone through great lengths to imply that Flipside, LLC is somehow associated with the defendants in the Michigan action. Flipside, LLC is an independent Delaware limited liability company, with its primary office located in

New York, New York. Flipside, LLC is not a subsidiary, parent, sister company or affiliate of any of the defendants in the underlying action.

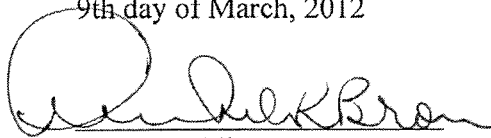
3. Respondent suggests that Flipside, LLC is somehow related to a completely separate entity known as Flipside, Inc., a company that was registered as a Delaware corporation in 2000. This suggestion is erroneous. Before ending my employment with Firstlook, I entered into an asset purchase arrangement and obtained, among other things, the domain for my company's website. My company is not, and had nothing to do with, Flipside, Inc. as alleged in Respondent's moving papers.

WHEREFORE, it is respectfully requested that the application seeking to quash the Subpoena and issuance of a protective order be granted and a judgment together with Movant's attorneys' fees be entered against the Weather Underground, Inc., and for such other further relief as the Court deems just and proper.



SETH JACOBY

Sworn to before me this  
9th day of March, 2012



Notary Public

MICHELE R. BROWN  
Notary Public, State of New York  
No. 01BR6006511  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires May 4, 2014

# Exhibit 1

Apr. 08. 2012 07:25 AM

**ADP Benefit Services**

P.O. Box 2968

Alpharetta, GA 30023-2968

**COBRA Services**

COBRA Continuation Coverage Election Notice

7/18/2011

CASFLPC  
NHQI 0095

SETH JACOBY AND FAMILY

1385 YORK AVENUE

APT. 16B

NEW YORK, NY 10021

Dear: Seth Jacoby and Family

This notice contains important information about your right to continue your health care coverage in the Epic Media Group (the Plan). Please read the information contained in this notice very carefully.

To elect COBRA continuation coverage, follow the instructions on the enclosed Election Form.

Please note: Although ADP Benefit Services has contracted with the employer to provide various COBRA administration services, ADP is not the Plan Administrator. The Plan Administrator is the sponsor of the Plan.

If you do not elect to continue your health care coverage by completing the enclosed "Election Form" and returning it to us, your coverage under the Plan will end on 7/15/2011 due to end of employment on 07/15/2011.

Each person (qualified beneficiary) below is entitled to elect COBRA continuation coverage under the Plan.

Seth Jacoby

Because of the event (listed above) that will end coverage under the Plan, those individuals indicated above, are entitled to continue health care coverage for up to 18 months. If elected, COBRA continuation coverage will begin on 07/16/2011 and can last until 1/15/2013.

**Monthly Cost of COBRA Continuation Coverage:**

MetLife Low Dental Plan (265103)  
 UHC PPO 100% Medical Plan (265105)  
 United Healthcare Vision Plan (265108)

Beneficiary - Child(ren)

Beneficiary - Family

Beneficiary - Spouse/DP

Beneficiary Only (\*)

Apr. 08. 2012 07:26 AM

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ADP Benefit Services  
P.O. Box 2968  
Alpharetta, GA 30023-2968

7/18/2011

## COBRA CONTINUATION COVERAGE ELECTION FORM

IMPORTANT: You must elect by 9/16/2011. Your COBRA account number is \_\_\_\_\_ include this account number in all correspondence and in the memo field of your checks when making payments.

## INSTRUCTIONS:

- To make your elections online, go to <http://www.benefirect.adp.com>. You can also make your initial payment online at this time.
- To elect using this form, indicate with a check mark the coverage that each person listed wishes to continue under COBRA.
- If a dependent or spouse name is not present on this election form or if one needs to be added, please call ADP Benefit Services at 800-526-2720.
- Please correct any name that is misspelled.
- Mail (postmark) or fax your election form by the election due date above.
- If making a payment, include the account number \_\_\_\_\_ memo field of your check.
- If a spouse is elected as part of the coverage below, please provide the spouses signature below as well.

	Seth Jacoby	Lindsay Jacoby	Natalie Jacoby	Noah Jacoby
MetLife Low Dental Plan (265103)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
UHC PPO 100% Medical Plan (265105)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
United Healthcare Vision Plan (265108)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Social Security Number on file:

Yes No No No

Note: If we do not have your SSN on record (No) and you elect coverage, there may be a delay in getting your coverage started. Please contact us at 800-526-2720 and provide your SSN so your records can be updated.

Please indicate address and telephone changes or corrections:

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

I (We) elect COBRA as indicated above and certify that I (we) have accurately completed this form.

Signature of Seth Jacoby (REQUIRED):

Date \_\_\_\_\_

Signature of \_\_\_\_\_

Date \_\_\_\_\_

To elect online go to:	Mail completed form to:	Fax completed form to:
<a href="http://www.benefirect.adp.com">http://www.benefirect.adp.com</a>	ADP Benefit Services P.O. Box 2968 Alpharetta, GA 30023-2968	1-770-619-7160 Fax must be received no later than 12:00 AM (midnight), Eastern Standard Time, on 09/16/2011.
Complete online election no later than 12:00AM (midnight), Eastern Standard Time, on 09/16/2011.	If mailed, election form must be postmarked no later than 09/16/2011.	If you have questions call: 800-526-2720

Apr. 08. 2012 07:27 AM

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## CERTIFICATE OF CREDITABLE COVERAGE

## 1. Date of this certificate:

07/18/2011

## 6. Name of individuals to whom this certificate applies:

Seth Jacoby,

## \*9. Date coverage ended (or if coverage has not ended, enter "continuing"):

07/15/2011

## 4. For further information, call:

ADP Benefit Services at (800) 526-2720.

## 10. Date Continuation coverage began:

## 5. Name of participant:

Seth Jacoby

## 11. Date Continuation coverage ended (or if coverage has not ended, enter "continuing"):

*[Note: separate certificates will be furnished if information is not identical for the participant and each beneficiary.]**\*Note: Should the "Date coverage begun" and "Date coverage ended" fields appear blank, you may have received a previous Certificate from your former employer or insurance carrier. The party responsible for providing that Certificate (who is not ADP) should be able to provide you with a copy if you are not presently able to locate that document.*

## Statement of HIPAA Portability Rights

**IMPORTANT - KEEP THIS CERTIFICATE.** This certificate is evidence of your coverage under this plan. Under a federal law known as HIPAA, you may need evidence of your coverage to reduce a preexisting condition exclusion period under another plan, to help you get special enrollment in another plan, or to get certain types of individual health coverage even if you have health problems.

**Preexisting condition exclusions.** Some group health plans restrict coverage for medical conditions present before an individual's enrollment. These restrictions are known as "preexisting condition exclusions." A preexisting condition exclusion can apply only to conditions for which medical advice, diagnosis, care, or treatment was recommended or received within the 6 months before your "enrollment date." Your enrollment date is your first day of coverage under the plan, or, if there is a waiting period, the first day of your waiting period (typically, your first day of work). In addition, a preexisting condition exclusion cannot last for more than 12 months after your enrollment date (18 months if you are a late enrollee). Finally, a preexisting condition exclusion cannot apply to pregnancy and cannot apply to a child who is enrolled in health coverage within 30 days after birth, adoption, or placement for adoption.


If a plan imposes a preexisting condition exclusion, the length of the exclusion must be reduced by the amount of your prior creditable coverage. Most health coverage is creditable coverage, including group health plan coverage, COBRA continuation coverage, coverage under an individual health policy, Medicare, Medicaid, State Children's Health Insurance Program (SCHIP), and coverage through high-risk pools and the Peace Corps. Not all forms of creditable coverage are required to provide certificates like this one. If you do not receive a certificate for past coverage, talk to your new plan administrator.

You can add up any creditable coverage you have, including the coverage shown on this certificate. However, if at any time you went for 63 days or more without any coverage (called a break in coverage) a plan may not have to count the coverage you had before the break.

4/9/12

## BeneDirect

Welcome: Jacoby, Seth

 Page Help

Active Plans

Inactive Plans

### Coverage Details

Listed below are the plans that became inactive within the past 18 months.



Coverage Type

COBRA

Coverage Period

07/16/2011 - 01/15/2013

#### Inactive Plans

Covered Participants	Plan Name	Start Date	End Date	Coverage Level	Paid Thru Date	Monthly Rate	Payment Amount
 View		07/16/2011	12/31/2011	Beneficiary + Family	12/31/2011		
 View		07/16/2011	12/31/2011	Beneficiary + Family	12/31/2011		

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